

Message

From: Ballotti, Doug [ballotti.douglas@epa.gov]
Sent: 1/26/2021 2:07:47 PM
To: Newton, Cheryl [Newton.Cheryl@epa.gov]
CC: Short, Thomas [short.thomas@epa.gov]; Tanaka, Joan [Tanaka.Joan@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]
Subject: FW: News Forwarded: Ann Arbor dioxane polluter wants to hit pause on court case while Superfund process plays out...

FYI.

From: Kelley, Jeff <kelley.jeff@epa.gov>
Sent: Tuesday, January 26, 2021 8:05 AM
To: Ballotti, Doug <ballotti.douglas@epa.gov>; Cannon, Phillippa <Cannon.Phillippa@epa.gov>
Subject: RE: News Forwarded: Ann Arbor dioxane polluter wants to hit pause on court case while Superfund process plays out...

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<https://www.mlive.com/news/ann-arbor/2021/01/ann-arbor-dioxane-polluter-wants-to-hit-pause-on-court-case-while-superfund-process-plays-out.html>

Ann Arbor dioxane polluter wants to hit pause on court case while Superfund process plays out

Updated Jan 25, 2021; Posted Jan 25, 2021

By Ryan Stanton | ryanstanton@mlive.com

ANN ARBOR, MI — The company responsible for a large plume of dioxane pollution in Ann Arbor is asking a local judge to hit the pause button on pending litigation.

Attorneys for Gelman Sciences filed a motion in Washtenaw County Circuit Court on Friday, Jan. 22, asking Judge Tim Connors for a stay of his order scheduling March hearings on modifying a Gelman plume cleanup agreement.

It makes little sense to go forward with extensive briefings and remedy hearings before Connors until the question of a federal remedy is resolved, Gelman's attorneys argued, noting local officials are trying to petition the U.S. Environmental Protection Agency for a Superfund cleanup, a potentially years-long process that's just starting and playing out separately from the Circuit Court litigation.

Holding off on the court hearings makes sense in light of local officials' "determined efforts to divest this court of jurisdiction by seeking federal Superfund listing," wrote Gelman's attorneys, Michael Caldwell and Karen Beach.

If the EPA takes over plume cleanup enforcement, then the EPA and federal courts will be determining the remedy without local control and without influence by Connors, Gelman's attorneys wrote in Friday's filing.

Township joins Ann Arbor and Washtenaw County in seeking EPA Superfund cleanup of Gelman plume

If a stay is not granted, Gelman will appeal to the Michigan Court of Appeals, they said.

Gelman is being sued by Ann Arbor, Washtenaw County, Scio Township, the Huron River Watershed Council and the state of Michigan over its decades-old, toxic plume that is spreading for miles through the area's groundwater and posing threats to drinking water supplies, among other concerns.

After unsuccessful attempts over the last four years to negotiate a new cleanup plan on which all parties could agree, court hearings are now scheduled for March 8-9, when the parties are to make their cases for modifying a consent judgment that governs management of the plume.

Under the court's schedule, the local plaintiffs must file briefs by Jan. 29 and Gelman's response briefs are due Feb. 12, and the state's Feb. 26.

Gelman is objecting to the process, arguing the hearings are procedurally improper, and asking Connors to put the case on hold. In court filings earlier this month, Gelman argued against allowing the local parties to remain in the case, arguing it should only have to deal with the state as a plaintiff.

Ann Arbor dioxane polluter vents frustration with local officials in new court filings

Gelman also argues Connors can't modify the consent judgment without Gelman's consent, and any award of relief to the local parties and against Gelman in the form of a new remedy would violate Gelman's right to due process.

If Connors goes forward with the hearings and tries to order a remedy, the Court of Appeals may ultimately conclude the hearings and process that produced the remedy should never have taken place, Gelman's attorneys argued Friday.

"The court also risks disqualifying itself as the judicial finder of fact if it uses the hearing to mediate the differences that have arisen between Gelman, the state and the intervenors," Gelman's attorneys wrote.

A hearing on Gelman's motion for a stay is now scheduled for 9:30 a.m. Feb. 4 before Connors.

Some local officials, including Ann Arbor Mayor Christopher Taylor, have expressed concerns that simultaneously seeking a Superfund cleanup could hurt chances of securing a remedy in Circuit Court, though others have argued a Superfund cleanup would be better anyway, even if the process to get there could take years.

'We're really, really slow,' EPA tells local officials seeking pollution cleanup

The last City Council made the 6-5 decision to seek a Superfund cleanup prior to resolution of the Circuit Court case, and one of the risks of doing so was that the polluter would try to suspend the state case, said Taylor, who voted against seeking a Superfund cleanup.

"We are now going to have to spend the time and money fighting that predicted effort to suspend," he said. "I have confidence in our legal team and hope we'll be successful."

County Commissioner Jason Morgan, D-Ann Arbor, said Gelman's motion for a stay is just another attempt by the polluter to delay action that would protect public health.

"This has been their strategy for decades and this is exactly why we are seeking EPA intervention while continuing to win in the courts," Morgan said.

Morgan said he's hopeful the administrations of Gov. Gretchen Whitmer and President Joe Biden will be helpful to local officials as the process moves forward.

Gelman's effort to delay the court process is not surprising, Scio Township Supervisor Will Hathaway said.

"What would be a surprise is Gelman demonstrating more concern about the people living with the mess it created," he said. "Gelman could share information about the extent of the dioxane pollution and put more of its billions of dollars into a thorough cleanup."

While local officials are pushing for a more aggressive cleanup and more monitoring, Gelman argued in Friday's court filing its current pump-and-treat response to the plume, which has been underway for many years, is enough to prevent unacceptable dioxane exposures.

If Connors agrees to dismiss the local plaintiffs, Gelman's attorneys said the company would be willing and eager to directly negotiate a new consent judgment with the Michigan Department of Environment, Great Lakes and Energy.

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From: Ballotti, Doug <ballotti.douglas@epa.gov>

Sent: Tuesday, January 26, 2021 7:59 AM

To: Kelley, Jeff <kelley.jeff@epa.gov>; Cannon, Phillippa <Cannon.Phillippa@epa.gov>

Subject: FW: News Forwarded: Ann Arbor dioxane polluter wants to hit pause on court case while Superfund process plays out...

Jeff/Phillippa,

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Thanks. Doug

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